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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19 DISH NETWORK L.L.C.,

20 Plaintiff,

21 v.

22 JADOO TV, INC. et al.,

23 Defendants.

Case No. 2:18-cv-9768-FMO (KSx)

**DISH NETWORK L.L.C.'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF MOTION TO COMPEL SAJID
SOHAIL'S PRODUCTION OF
DOCUMENTS [Dkt. 75]**

Honorable Karen L. Stevenson

I. INTRODUCTION

Pursuant to the Court’s Order of June 26, 2019 (Dkt. 85), Plaintiff DISH Network L.L.C. (“DISH”) submits this supplemental brief in support of its motion to compel Defendant Sajid Sohail’s (“Sohail”) production of documents (the “Motion”) (Dkt. 75.)

On May 31, 2019, Jadoo TV, Inc. (“JadooTV”) filed its Suggestion of Bankruptcy with this Court (Dkt. 78) and a Chapter 11 Petition in the United States Bankruptcy Court for the Northern District of California, No. 19-41283. Accordingly, this action is stayed as to JadooTV, and Plaintiffs’ motion to compel is only directed at Sohail in his individual capacity.

Following the hearing on the Motion, the Court requested that DISH “[s]ubmit supplemental briefing...citing case law or other authority that addresses (1) whether a corporate officer of a company that is subject to a bankruptcy stay can be compelled to produce corporate documents related to the individual’s work activities for the bankrupt debtor and (2) whether any such documents are considered to be in the possession, custody, or control of the individual officer for the purpose of discovery as to that person in his individual capacity.” As shown by the authority cited below, a corporate officer of a company subject to a bankruptcy stay can be compelled to produce corporate documents related to the officer’s work activities for the bankrupt debtor; and such documents are considered to be in the possession, custody, or control of the officer for purposes of discovery as to that person in his individual capacity.

II. ARGUMENT & AUTHORITIES

A. Sohail Can be Compelled to Produce Corporate Documents.

1. The Automatic Stay Does Not Apply to Sohail.

Although the filing of a bankruptcy petition immediately stays all civil actions commenced against the debtor, it is well-established that the automatic stay applies only to the debtor and therefore does not extend to a debtor’s non-bankrupt co-defendants, persons responsible for the debtor’s debts, or others with a similar factual

1 or legal connection to the debtor. *See In re Chugach Forest Prods., Inc.*, 23 F.3d
 2 241, 246 (9th Cir. 1994) (“As a general rule, the automatic stay of section 362(a)
 3 protects only the debtor, property of the debtor or property of the estate. It does not
 4 protect non-debtor parties or their property.”); *In re Advanced Ribbons & Office*
 5 *Prods. Inc.*, 125 B.R. 259, 263 (B.A.P. 9th Cir. 1991); *Seiko Epson Corp. v. Nu-Kote*
 6 *Int’l, Inc.*, 190 F.3d 1360, 1364 (Fed. Cir. 1999) (“It is clearly established that the
 7 automatic stay does not apply to non-bankrupt co-defendants of a debtor even if they
 8 are in a similar legal or factual nexus with the debtor.”).

9 This is true even where the non-bankrupt co-defendants are owners or high-
 10 ranking principals of the bankrupt entity. *See In re Hujazi*, No. NC-16-1018-FBJu,
 11 2017 WL 3007084, at *10 (B.A.P. 9th Cir. July 14, 2017) (stating the automatic stay
 12 does not protect debtor’s owners, affiliates, or co-obligees); *In re Related Asbestos*
 13 *Cases*, 23 B.R. 523, 529 (N.D. Cal. 1982) (stating that the automatic stay does not
 14 extend to a debtor corporation’s president); *In re Ronald Perlstein Enters.*, 70 B.R.
 15 1005, 1008-09 (Bankr. E.D. Pa. 1987) (holding that absent an order from the
 16 bankruptcy court stating otherwise, plaintiff was free to proceed against debtor
 17 corporation’s principal); *In re Trans-Serv. Logistics, Inc.*, 304 B.R. 805, 806 (Bankr.
 18 S.D. Ohio 2004) (holding that debtor defendant’s president/chief executive officer
 19 and debtor’s general manager, as non-debtor co-defendants in pre-petition litigation,
 20 were not entitled to extension of automatic stay to halt litigation against them).

21 The fact that Sohail is an officer and owner of JadooTV does not afford him
 22 the protection of the automatic stay.

23 **2. Sohail is Required to Respond to Discovery Requests Aimed at** 24 **Establishing His Individual Liability.**

25 Because litigation is not stayed as to non-bankrupt co-defendants, neither are
 26 the non-bankrupt party’s discovery obligations stayed. Such is the case even if the
 27 “information” to be compelled “[c]ould eventually adversely affect the Debtor” and
 28 the party to be compelled is none other than the debtor himself. *In re Miller*, 262

1 B.R. 499, 504 (B.A.P. 9th Cir. 2001) (holding that automatic stay did not protect
2 Chapter 13 debtor from having to comply with discovery requests in multi-defendant
3 litigation in which she was one of defendants, as long as the discovery requests were
4 framed as discovery pertaining only to creditors' claims against other, non-debtor
5 defendant).

6 *In re Miller* stands for the proposition “[t]hat it is [sic] permissible for a
7 plaintiff to elicit testimony from a debtor which is not only relevant to claims asserted
8 against a non-debtor, but also may be damaging to the debtor...as long as one
9 purpose—out of perhaps many—of eliciting the testimony is to build a case against
10 a non-debtor. *In re Kenoyer*, 489 B.R. 103, 116 (Bankr. N.D. Cal. 2013); *see also In*
11 *re Richard B. Vance & Co.*, 289 B.R. 692, 697 (Bankr. C.D. Ill. 2003) (citing *In re*
12 *Miller* and stating “[i]t is now generally accepted that discovery pertaining to claims
13 against the bankrupt’s codefendants is not stayed, even if the discovery requires a
14 response from the debtor, and even if the information discovered could later be used
15 against the debtor.”).

16 If, as in *In re Miller*, a debtor herself can be forced to testify against a closely-
17 related, but non-bankrupt co-defendant, then so too may the debtor’s co-defendant
18 be compelled. *See Kenoyer*, 489 B.R. at 117 (citing *In re Mahurkar Double Lumen*
19 *Hemodialysis Catheter Patent Litig.*, 140 B.R. 969, 977 (N.D. Ill. 1992)) (“The
20 automatic stay also did not prevent the debtor’s former and current employees from
21 being deposed about information bearing on the litigation against another defendant
22 but not the debtor.”); *see also Le Metier Beauty Inv. Partners LLC v. Metier Tribeca,*
23 *LLC*, No. 13 CIV. 4650 (JFK), 2014 WL 4783008, at *5 (S.D.N.Y. Sept. 25, 2014)
24 (holding that debtor’s CEO was required to comply with discovery requests where
25 plaintiff sought to hold CEO jointly and severally liable for fraud with debtor).

26 In *Mahurkar* the court held that in a multi-district patent case the debtor and
27 its employees were required to comply with discovery requests relating to claims
28 against non-bankrupt defendants because “[t]hat a given witness used to work for

1 [debtor] (or still works for [debtor]) is irrelevant, if the discovery has utility other
2 than to facilitate recovery against [debtor].”¹ 140 B.R. at 977.

3 **3. The Unusual Circumstances Exception Does Not Apply.**

4 Some courts have extended the automatic stay to non-bankrupt co-defendants
5 when “unusual circumstances” warranted.² Unusual circumstances are established
6 “where there is an indemnification agreement between the debtor and non-debtor
7 defendants or when proceeding against the non-debtor defendants would impose a
8 substantial discovery burden on the debtor defendant,” thereby prejudicing the
9 debtor’s ability to successfully reorganize pursuant to Chapter 11 of the Bankruptcy
10 Code. *See Bradford Techs., Inc. v. Biggers*, No. C 11-04621 EDL, 2014 WL
11 12641953, at *6 (N.D. Cal. May 27, 2014) (citations omitted).

12 The “unusual circumstances” exception is inapplicable here for two distinct
13 reasons. First, the Ninth Circuit has not adopted the “unusual circumstances”
14 exception, and its applicability is not clear in this circuit. *See Chugach Forest*, 23
15 F.3d at 247 (stating that “[w]e have not explicitly recognized such an exception, and
16 we decline to do so in this case.”); *Klinkenborg Aerial Spraying and Seeding, Inc. v.*
17 *Rotorcraft Dev. Corp.*, 690 Fed. Appx. 540, 541 (9th Cir. 2017) (“We have never
18 adopted the ‘unusual circumstances’ exception in the Ninth Circuit and we decline to
19 do so here.”).

20 Second, to apply the exception, Sohail and JadooTV would need to request the
21 bankruptcy court “extend the automatic stay under its equity jurisdiction.” *Chugach*
22 *Forest*, 23 F.3d at 247 n.6; *see also Klinkenborg*, 690 Fed. Appx. at 540–41 (“Further,

23 ¹ An exception occurs where the nature of plaintiff’s suit against the debtor and their
24 non-bankrupt co-defendant requires the court to allocate liability among all the
25 defendants, including the debtor. *See Lewis v. Russell*, No. CIV. S–03–2646 WBS
26 KJM, 2009 WL 1260290, at *4-5 (E.D. Cal. May 7, 2009). However, this exception
27 is not implicated here where the liability of JadooTV and Sohail is alleged to be joint
28 and several. (*See* Dkt. 1, DISH’s Complaint, ¶¶ 69, 83, 91.); *Kenoyer*, 489 B.R. at
119–20.

² The “unusual circumstances” exception stems from *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986).

1 even if we were to adopt the ‘unusual circumstances’ exception, the exception
 2 *requires* the bankruptcy court to extend the automatic stay using its equity
 3 jurisdiction after hearing and the establishment of unusual need....”) (emphasis
 4 added).

5 **B. The Corporate Documents are Within Sohail’s Possession, Custody, or**
 6 **Control for Purposes of Discovery Aimed at Sohail in His Individual**
 7 **Capacity.**

8 Sohail claims without authority that “[m]ost, if not all, of the documents DISH
 9 seeks in its motion are in JadooTV’s possession, custody, or control” and therefore
 10 he may not be compelled to produce them. (Dkt. 80 at 2:21–25.) Sohail is incorrect:
 11 the corporate documents DISH seeks relating to Sohail’s individual liability are
 12 within Sohail’s control, and he may be compelled to produce them.

13 Sohail is the founder, chief executive officer, and an owner of JadooTV. (Dkt.
 14 28 at ¶ 8.) Courts routinely determine high-ranking corporate officers like Sohail to
 15 be in possession, custody, or control of their corporation’s documents for purposes
 16 of Rule 34. *See, e.g., U.S. Philips Corp. v. Synergy Dynamics Intl., LLC.*, No. 2:05-
 17 CV-00577-PMP-GWF, 2007 WL 9734384, at *9 (D. Nev. July 9, 2007) (stating that
 18 defendant corporate officer and shareholder “[c]an be compelled to produce relevant
 19 corporate documents...which he has the practical ability to produce.”); *In re Flag*
 20 *Telecom Holdings, Ltd. Sec. Litig.*, 236 F.R.D. 177, 181–82 (S.D.N.Y. 2006) (stating
 21 that corporate vice-president may be required to turn over corporate documents).

22 Discovery is not stayed as to a bankrupt corporation’s non-bankrupt “control
 23 persons” provided that discovery also pertains to claims against non-debtors.
 24 *Richard B. Vance*, 289 B.R. at 697. Accordingly, notwithstanding JadooTV’s
 25 bankruptcy, this Court may correctly compel Sohail to produce corporate documents
 26 that can be used to establish his individual liability. *See Le Metier Beauty*, 2014 WL
 27 4783008 at *5 (holding that debtor’s CEO was required to comply with post-petition
 28 discovery requests).

1 In *Le Metier Beauty*, the plaintiffs sought to hold the debtor and the debtor's
 2 CEO jointly and severally liable for securities fraud, common law fraud, and fraud in
 3 the inducement. *Id.* at 1. The Court declined to extend the debtor's automatic stay
 4 to its CEO, and allowed third-party discovery to proceed. *Id.* at 5. The discovery
 5 sought of the debtor's CEO included post-petition requests for production concerning
 6 the debtor's corporate documents, the CEO's work activities with the debtor, the
 7 CEO's communications with third-parties, documents relating to corporate purchases
 8 and shipments, and other documents that could be used to establish the CEO's
 9 individual liability. See *Le Metier Beauty Inv. Partners LLC v. Metier Tribeca, LLC*,
 10 No. 13 CIV. 4650 (JFK), Plaintiffs' First Set of Requests for Production to Defendant
 11 Richard Blanch, Dkt. 25-2 (S.D.N.Y. Aug. 12, 2014).

12 III. CONCLUSION

13 Neither DISH's claims nor discovery requests are stayed as to Sohail. As
 14 JadooTV's founder, CEO, and owner, Sohail is in control of the relevant JadooTV
 15 documents for purposes of discovery relating to Sohail, and he may be compelled to
 16 produce such documents.

17
 18 Dated: July 3, 2019

Respectfully submitted,

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